

Appl. No. : 10/783,412
Filed : February 20, 2004

REMARKS

In the Office Action mailed July 17, 2006, the Examiner objected to Claims 1 and 8 and further rejected Claims 1-16 under 35 U.S.C. § 102, in view of the Buchholz et al. reference (U.S. Patent No. 4,785,953) or the Islip reference (GB Patent No. 2,240,541). By this paper, the Applicant has amended the claims to highlight the subject matter which the Applicant believes is allowable over the art of record. Hence, reconsideration of the above-captioned in light of the amendments and remarks contained herein is now respectfully requested.

As an initial matter, the Examiner objected to Claims 1 and 8 identifying some grammatical inconsistencies. By this paper, the Applicant has amended Claims 1 and 8 along the lines suggested by the Examiner.

With respect to Buchholz, Buchholz fails to disclose a first connecting means that extends outward from the external wall of the insert where the first connecting means or the second connecting means have an asymmetric structure or form in the manner claimed by the Applicant. (*See, e.g.*, Claim 1 as amended). Specifically, the rib 34 and protuberance 48 of Buchholz, identified by the Examiner in the Office Action as disclosing the first connecting means 34 and the second connecting means 48, are only used to retain the container in the rack (Buchholz, Col. 5, Lines 10-12). Alignment of the container in the rack in one direction is achieved by the fact that the aperture in the rack has the same shape as the perimeter of the asymmetric portion of the external surface of the container. (*See*, Col. 1, Lines 53-55). Thus, the rib 34 and protuberance 48 are not actually involved in maintaining the right orientation of the container and this is further supported by the statement that "engagement of the protuberances on the rack with the rib of the container is obviously not required to practice the present invention." (Buchholz, Col. 5, Lines 17-20). Thus, there is no first and second means as claimed by the Applicant. Hence, there is nothing in Buchholz which either discloses or teaches the invention as defined by Claims 1, 8 and 15.

As an initial matter, after carefully reviewing Islip, the Applicant notes that Islip is not directed toward an array arrangement for use in a screening assay in the manner claimed by the Applicant in Claims 1 and 8 and 15 as amended. In fact, Islip discloses packaging containers which is very far removed from screening assays. In fact, this field of endeavor is sufficiently far removed from screening assay apparatuses that a person of ordinary skill in the art would be

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unlikely to look at this particular art. The Applicant notes that if the prior art is deemed to be too remote to the claimed subject matter, the courts have concluded that the art would be considered non-analogous. *See, e.g., In re Water*, 64 USPQ 571 (CCPA 1945).

Further, even if Islip was prior art, Islip does not disclose a connecting means that extends outward from the insert wherein either the first connecting means or the second connecting means have an asymmetric shape, structure or form. There is no protrusion on Islip and it does not have the asymmetric form as required by the Applicant. As such, Islip does not have a component which unambiguously inhibits misinsertion of the insert into the carrier. For the foregoing reasons, the Applicant believes that Claims 1, 8 and 15 are allowable over the art of record. The Applicant further believes that the remaining claims define additional patentable subject matter and are also allowable due to their respective dependencies on Claims 1, 8 and 15. Hence, the Applicant believes that the above-captioned application is in condition for allowance and requests the prompt allowance of the same. Should there be any impediment to the prompt allowance of the application, the Examiner is respectfully requested to call the undersigned at the number shown below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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